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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Major League Baseball Properties, Inc.

Serial Nos. 78183355 and 78183381

Mary L. Kevlin and Heather L. Jensen of Cowan, Liebowitz & Latman, P.C. for Major League Baseball Properties, Inc.

Scott Baldwin, Trademark Examining Attorney, Law Office 112
(Janice O'Lear, Managing Attorney).

Before Hanak, Hairston and Chapman, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Major League Baseball Properties, Inc. has filed
applications to register the marks THE BASEBALL CHANNEL¹ and
MLB TV THE BASEBALL CHANNEL² for, in each case:

entertainment services, namely, baseball games,
competitions and exhibitions rendered live,
through broadcast media including television and
radio and via a global computer network or a

¹ Serial No. 78183355, filed on November 8, 2002, based on an allegation of a bona fide intention to use the mark in commerce. The word BASEBALL is disclaimed apart from the mark as shown.

² Serial No. 78183381, filed on November 8, 2002, based on a bona fide intention to use the mark in commerce. The terms TV and BASEBALL are disclaimed apart from the mark as shown.

commercial on-line service; providing, producing and distributing programming for others in the nature of baseball games, competitions and exhibitions and providing information in the field of sports and entertainment, all through broadcast media including television and radio and via a global computer network or a commercial on-line service; [and] education services in the nature of baseball skills instruction.

In application Serial No. 78183355 applicant has appealed the trademark examining attorney's final refusal to register the mark THE BASEBALL CHANNEL under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that as applied to the recited services, the mark is merely descriptive of them.

In application Serial No. 78183381 applicant has appealed the trademark examining attorney's final requirement that applicant disclaim THE BASEBALL CHANNEL apart from the mark MLB TV THE BASEBALL CHANNEL, and his final refusal to register the mark absent compliance with the final requirement. Section 6(a) of the Trademark Act, 15 U.S.C. 1056(a). The basis of the disclaimer requirement is the examining attorney's contention that THE BASEBALL CHANNEL is merely descriptive of the recited services.

Briefs have been filed, but an oral hearing was not requested. Because the underlying issue in each application is the same, i.e., whether THE BASEBALL CHANNEL

is merely descriptive of the recited services, the appeals have been treated in a single opinion.

It is the examining attorney's position that THE BASEBALL CHANNEL is merely descriptive of applicant's specific services of "producing and distributing programming for others in the nature of baseball games... through broadcast media including television."³ The examining attorney contends "[t]he combined term 'THE BASEBALL CHANNEL' may be used to describe a television channel about the game of baseball or featuring baseball games. In addition, the eventual broadcasting of programs under the term 'THE BASEBALL CHANNEL' is merely descriptive of the intended purpose or function of the program production and distribution services recited in the instant application." (Brief, p. 4).

The examining attorney made of record the following definitions from The American Heritage Dictionary of the English Language (4th ed. 2000):

baseball: A game played with a bat and ball by two opposing teams of nine players, each team playing alternately in the field and at bat, the players at bat having to run a course of four bases laid out in a diamond pattern in order to score.

³ We note that the examining attorney has not argued that THE BASEBALL CHANNEL is merely descriptive of any of the other services set forth in the recitation of services. In view thereof, the examining attorney failed to prove that the phrase is descriptive of such services.

channel: A specified frequency band for the transmission and reception of electromagnetic signals, as for television signals.

Applicant, in urging reversal of the refusal to register, asserts that THE BASEBALL CHANNEL does not immediately convey any information about the nature of applicant's services of "producing and distributing programming for others in the nature of baseball games... through broadcast media including television;" and that the word CHANNEL, in particular, does not describe any feature or characteristic of applicant's production or distribution services.

It is applicant's position that the definition of "channel" relied on by the examining attorney is not applicable to applicant's recited services as they do not involve television broadcasting services or the transmission of and reception of television signals. Further, applicant argues that the word "channel" has a number of meanings, including "a means of communication or expression"; "a way, course or direction of thought or action"; "a conduit"; and "to direct toward or into some particular course."⁴ In view of these meanings, applicant

⁴ Random House Unabridged Dictionary (2d ed. 1993); Merriam-Webster Online; and Dictionary.com.

argues that its mark may suggest that its services are like a conduit of baseball-related information and content or that through the provision of applicant's services, consumers are directed toward or into a more heightened interest in the sport of baseball. Applicant concludes that doubt should be resolved in its favor.⁵

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ 1009 (Fed. Cir. 1987) and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). Moreover, in order to be merely descriptive, the mark must immediately convey information as to the ingredients, qualities or characteristics of the goods or services with a "degree of particularity." See *In re TMS Corporation of the Americas*, 200 USPQ 57, 59 (TTAB 1978); and *In re Entenmanns Inc.*, 15 USPQ2d 1750, 1751 (TTAB 1990), *aff'd*, *unpub'd*, Fed. Cir. February 13, 1991.

⁵ We note that applicant, although acknowledging that it was a non-precedential case, nonetheless referred in its reply brief (p. 3) to *In re Petersen's Guide* (TTAB August 4, 1998). The Board disregards citation to any non-precedential decision (unless, of course, it is asserted for *res judicata*, law of the case, or such other issues). See *General Mills Inc. v. Health Valley Foods*, 24 USPQ2d 1270, at n. 9 (TTAB 1992).

Further, it is well established that the determination of mere descriptiveness must be made not in the abstract or on the basis of mere guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. See *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995). It has long been acknowledged that there is thin line between terms that are merely descriptive and those that are suggestive. See *In re Atavio Inc.*, 25 USPQ2d 1361 (TTAB 1992).

The examining attorney bears the burden of showing that a mark is merely descriptive of the identified goods or services. See *In re Merrill, Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987).

In the present case, we find that the examining attorney has not established that THE BASEBALL CHANNEL is merely descriptive of the services of "producing and distributing programming for others in the nature of baseball games... through broadcast media including television."

There is no dispute that the word BASEBALL is descriptive of applicant's services. Indeed, it is clear

from the recitation of services that the programming applicant intends to produce and distribute is in the nature of baseball games. Therefore a significant characteristic of such programming is that it will feature baseball games.

Further, we recognize that the word CHANNEL is descriptive of television broadcasting services. However, the services at issue in this case are not television broadcasting services, but rather the production and distribution of programming. It is not at all clear from the definition of "channel" of record that the term has descriptive significance as applied to such services. Moreover, the record is devoid of any descriptive uses of "channel" for the production and distribution of programming. Thus, we are not persuaded that the phrase THE BASEBALL CHANNEL as used in connection with such services conveys an immediate idea about the services with any degree of particularity. Specifically what THE BASEBALL CHANNEL describes about the services of producing and distributing programming is ambiguous and unclear.

In sum, based on the limited record before us, we conclude that THE BASEBALL CHANNEL when considered as a whole in connection with "producing and distributing programming for others in the nature of baseball games...

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through broadcast media including television" is not merely descriptive. To the extent that there is any doubt in this case, we have resolved that doubt in applicant's favor.

Decision: In application Serial No. 78183355 the refusal to register under Section 2(e)(1) is reversed. In application Serial No. 78183381 the refusal of registration based on applicant's failure to disclaim THE BASEBALL CHANNEL is reversed.